

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

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Christopher Cathey,	:	
	:	
	:	
Plaintiff,	:	Civil Action No.: <u>3:13-343-CMC</u>
v.	:	
	:	<b>COMPLAINT AND DEMAND FOR</b>
Account Control Technology, Inc.; and	:	<b>JURY TRIAL</b>
DOES 1-10, inclusive,	:	
	:	
Defendants.	:	
	:	

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For this Complaint, the Plaintiff, Christopher Cathey, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA") and the invasions of Plaintiff's personal privacy by the Defendant and its agents in their illegal efforts to collect a consumer debt.
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1337.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

4. The Plaintiff, Christopher Cathey ("Plaintiff"), is an adult individual residing in Irmo, South Carolina, and is a "consumer" as the term is defined by 15 U.S.C. § 1692a(3).

5. Defendant Account Control Technology, Inc. ("ACT"), is a California business entity with an address of 6918 Owensmouth Avenue, Canoga Park, California 91303, operating as a collection agency, and is a "debt collector" as the term is defined by 15 U.S.C. § 1692a(6).

6. Does 1-10 (the "Collectors") are individual collectors employed by ACT and whose identities are currently unknown to the Plaintiff. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

7. ACT at all times acted by and through one or more of the Collectors.

#### **ALLEGATIONS APPLICABLE TO ALL COUNTS**

##### **A. The Debt**

8. The Plaintiff allegedly incurred a financial obligation (the "Debt") to an original creditor (the "Creditor").

9. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meets the definition of a "debt" under 15 U.S.C. § 1692a(5).

10. The Debt was purchased, assigned or transferred to ACT for collection, or ACT was employed by the Creditor to collect the Debt.

11. The Defendants attempted to collect the Debt and, as such, engaged in "communications" as defined in 15 U.S.C. § 1692a(2).

##### **B. ACT Engages in Harassment and Abusive Tactics**

12. In or around November 2012, ACT began contacting Plaintiff in an attempt to collect the Debt by placing numerous calls to Plaintiff's work-issued cellular phone and business landline.

13. ACT placed calls to Plaintiff using an automated telephone dialer system with an artificial or prerecorded voice (hereafter "Robocalls").

14. Plaintiff never provided his consent to be contacted on his work-issued cellular phone.

15. Upon answering each of ACT's Robocalls, Plaintiff would hear ringing, as if he had initiated the telephone call.

16. After this period of ringing, a live representative from ACT came on the line.

17. On several occasions, Plaintiff informed ACT that his cellular phone was issued by his employer and requested that ACT cease all Robocalls as he could not take personal calls to that number.

18. Additionally, Plaintiff requested ACT cease all Robocalls to his place of employment.

19. Despite these repeated requests, ACT continued to contact Plaintiff with Robocalls in its campaign to collect the Debt.

20. During conversations, ACT failed to clearly inform Plaintiff as to whom the Debt was owed and how much was owed.

21. Furthermore, ACT threatened it would garnish Plaintiff's wages.

22. ACT, however, did not have the present legal ability to affect immediate garnishment of Plaintiff's wages without first obtaining a judgment from court.

### **C. Plaintiff Suffered Actual Damages**

23. The Plaintiff has suffered and continues to suffer actual damages as a result of the Defendants' unlawful conduct.

24. As a direct consequence of the Defendants' acts, practices and conduct, the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

**COUNT I**

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT –**  
**15 U.S.C. § 1692, et seq.**

25. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

26. The Defendants' conduct violated 15 U.S.C. § 1692c(a)(1) in that Defendants contacted the Plaintiff at a place and during a time known to be inconvenient for the Plaintiff.

27. The Defendants' conduct violated 15 U.S.C. § 1692c(a)(3) in that Defendants contacted the Plaintiff at his place of employment, knowing that the Plaintiff's employer prohibited such communications.

28. The Defendants' conduct violated 15 U.S.C. § 1692d in that Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.

29. The Defendants' conduct violated 15 U.S.C. § 1692d(5) in that Defendants caused a phone to ring repeatedly and engaged the Plaintiff in telephone conversations, with the intent to annoy and harass.

30. The Defendants' conduct violated 15 U.S.C. § 1692e in that Defendants used false, deceptive, or misleading representation or means in connection with the collection of a debt.

31. The Defendants' conduct violated 15 U.S.C. § 1692e(2) in that Defendants misrepresented the character and amount of the debt.

32. The Defendants' conduct violated 15 U.S.C. § 1692e(4) in that Defendants threatened the Plaintiff with garnishment if the debt was not paid.

33. The Defendants' conduct violated 15 U.S.C. § 1692f in that Defendants used unfair and unconscionable means to collect a debt.

34. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

35. The Plaintiff is entitled to damages as a result of Defendants' violations.

**COUNT II**

**WRONGFUL INTRUSION INTO PRIVATE AFFAIRS**

36. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

37. South Carolina state law recognizes the Plaintiff's right to be free from invasions of privacy in such a manner as to outrage or cause serious mental suffering, shame, and humiliation to Plaintiff; thus, the Defendants violated South Carolina state law.

38. The Defendants intentionally intruded upon Plaintiff's right to privacy by continually harassing the Plaintiff with phone calls to her home.

39. The telephone calls made by the Defendants to the Plaintiffs were so persistent and repeated with such frequency that they caused serious mental suffering, shame, and humiliation to Plaintiff thus satisfying the state law requirement for an invasion of privacy.

40. The conduct of the Defendants in engaging in the illegal collection activities demonstrated blatant and shocking disregard of Plaintiff's rights and resulted in multiple invasions of privacy in such a way as would be considered highly offensive to a reasonable person.

41. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from the Defendants.

42. All acts of the Defendants and its agents were committed with malice, intent, wantonness, and recklessness, and as such, the Defendants are subject to imposition of punitive damages.

### **COUNT III**

#### **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –** **47 U.S.C. § 227, et seq.**

43. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

44. Defendants contacted Plaintiff using an automatic telephone dialing system and/or by using a prerecorded or artificial message on a cellular telephone of 47 U.S.C. § 227(b)(1)(A)(iii).

45. Defendants contacted Plaintiff using an automatic telephone dialing system and/or by using a prerecorded or artificial message on a residential telephone of 47 U.S.C. § 227(b)(1)(A)(iii).

46. Plaintiff either never provided express consent to Defendant or the Creditor to call his cellular and residential telephone numbers, or Plaintiff revoked his consent to be contacted by Defendant on his cellular and residential telephones by his repeated demands to cease calling his cellular and residential telephones.

47. The calls from Defendant to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

48. Each of the aforementioned calls made by Defendant constitutes a negligent or intentional violation of the TCPA, including each of the aforementioned provisions of 47 U.S.C. § 227, *et. seq.*

49. As a result of each of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

50. As a result of each of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays that judgment be entered against the Defendants:

1. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;
2. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendants;
3. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
4. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
5. Actual damages from the Defendants for all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional and/or reckless invasions of privacy in an amount to be determined at trial for the Plaintiff;
6. Punitive damages; and
7. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: February 7, 2013

Respectfully submitted,

By 

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